

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUHIKO MORI

Appeal 2007-2499
Application 09/765,221
Technology Center 3600

Decided: October 31, 2007

Before LINDA E. HORNER, ANTON W. FETTING, and DAVID B. WALKER,
Administrative Patent Judges.

HORNER, *Administrative Patent Judge.*

ORDER REMANDING TO THE EXAMINER

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-29, all the claims currently pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002). This appeal includes a record that is not ripe for review and pursuant to 37 C.F.R. § 41.50(a)(1) (2006), we remand this application to the Examiner to take appropriate action consistent with our comments below. 37 C.F.R. §§ 41.35(b) and 41.50(a)(1) (2006).

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In the Final rejection mailed September 1, 2005, from which Appellant has appealed, the Examiner rejected claims 1-14 under 35 U.S.C. § 101 for being directed to non-statutory subject matter. More specifically, the Examiner found that there was “no technological innovation included in the limitations” (Final Rejection 2). Appellant responded to this rejection in the Appeal Brief (Appeal Br. 14-15). The Examiner, however, failed to address Appellant’s arguments with regard to the rejection under 35 U.S.C. § 101 in the Answer and failed to state whether the rejection had been withdrawn. As such, the status of the rejection of claims 1-14 under 35 U.S.C. § 101 is unclear from the record before us. Accordingly, we remand this application to the Examiner for further clarification as to the status of the rejection of claims 1-14 under 35 U.S.C. § 101 and to determine whether or not a new ground of rejection under 35 U.S.C. § 101 is proper in view of the recent decision in *In re Comiskey*, ___ F.3d ___, 2007 WL 2728361 (Fed. Cir. 2007).

Furthermore, we note that page 22 of Appellant’s Appeal Brief is missing. Our review of the text from the page preceding and following the missing page indicates that the missing text more likely than not includes additional arguments presented by Appellant. Accordingly, we remand this application to the Examiner to enter the missing page in the record and to consider any arguments thereon.

ORDER

Accordingly, it is ORDERED that the application is remanded to the Examiner for appropriate action in regard to the issued discussed above.

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This remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the board.

REMANDED

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PRICE HENEVELD COOPER DEWITT & LITTON, LLP
695 KENMOOR, S.E.
P.O. BOX 2567
GRAND RAPIDS, MI 49501